



25 SEP 2003

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In re Application of :  
MEARS, Robert, et al. :  
U.S. Application No.:09/914,944 :  
PCT No.: PCT/GB00/00768 :  
International Filing Date: 03 March 2000 :  
Priority Date: 05 March 1999 :  
Attorney's Docket No.: NVSS-P01-001 :  
For: IMPROVEMENTS IN AND RELATING TO :  
GRATINGS :

DECISION

This decision is issued in response to the "Petition To Withdraw Holding Of Abandonment Under 37 CFR 1.181" filed 28 July 2003.

### **BACKGROUND**

The procedural background of this application was set forth in the Communication mailed by this Office on 18 June 2003. That Communication informed applicants that this application was abandoned based on the failure to respond to the Notification Of Missing Requirements mailed 15 February 2002.

On 28 July 2003, applicants filed the present petition. The petition argues that the abandonment should be withdrawn because counsel for applicants never received the Notification Of Missing Requirements.

### **DISCUSSION**

Section 711.03(c)II of the MPEP sets forth the requirements for establishing the failure to receive an Office communication:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Here, though it is implied, the petition does not contain the required express statement that counsel has searched the file jacket and that the Notification Of Missing Requirements is not contained therein (such statement is required from current counsel, who have the application file, and from prior counsel, with respect to any file materials they maintained after the transfer of the application to current counsel).

Regarding the docket records requirement, applicants have attached a copy of prior counsel's docket sheet for this particular file. These docket records are not sufficient. They apply only to this particular case, and therefore do not provide evidence as to whether the Notification Of Missing Requirements was received but simply docketed under an incorrect case. Applicant must provide a copy of the docket record which sets out all the responses due in the USPTO on 15 April 2002, the date on which a response to the Notification Of Missing Requirements was due.

Because applicant has not satisfied all the requirements for establishing that the Notification Of Missing Requirements was not received, the application remains properly abandoned.

### **CONCLUSION**

For the above reasons, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice. The application remains abandoned.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition to Under 37 CFR 1.181." No petition fee is required.

Any further correspondence with respect to this matter deposited should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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